

# INTRODUCTION



*A*dministration of justice, as a concept and in practice, has existed in California at least since statehood in 1850. Judge R. A. Wilson, one of the original superior court trial judges, referred in 1850 to the “administration of justice” when describing the Spanish *alcalde* system in California.<sup>1</sup> The Committee on the Judiciary, in the same year, reported to the first California Legislature that “the administration of the [justice] system is of more consequence than the system itself.”<sup>2</sup> From its inception in 1926, the Judicial Council of California has been constitutionally mandated “to improve the administration of justice.”<sup>3</sup>

Administration of justice, however, is hardly self-defining and means different things to different persons. In fact, there is no agreed definition of the term or the several variations that convey approximately the same meaning: “judicial administration,”<sup>4</sup> “court management,”<sup>5</sup> and “to administer the delivery of court system services.”<sup>6</sup>

The absence of an agreed definition is matched by the absence of agreed boundaries. Roscoe Pound, for example, in his seminal 1906 speech, “The Causes of Popular Dissatisfaction with the Administration of Justice,” addressed, among other topics, procedure, adversarial systems, uncertainty, delay, expense, multiplicity of courts, concurrent jurisdiction, geographic jurisdiction, jury systems, political influence on and in courts, and public ignorance regarding the courts.<sup>7</sup>

Chief Justice Arthur T. Vanderbilt of New Jersey, in his 1949 *Minimum Standards of Judicial Administration*, addressed a rather different list of topics: the selection, conduct, and tenure of judges; managing the business of the courts; rulemaking and the judicial regulation of procedure; the selection and service of juries; pretrial conferences; trial practice; courts of limited jurisdiction; the law of evidence; appellate practice; and state administrative agencies and tribunals.<sup>8</sup>

More contemporary expositions expand the boundaries. Standards of Judicial Administration, the series published by the American Bar Association (ABA), seeks to encompass every tangible aspect of the courts. Volume 1, *Standards Relating to Court Organization*, includes structure, rulemaking, policymaking, administration, finance, budgets, and information systems. With respect to judges, these standards address qualifications, selection, discipline, removal, compensation, retirement, continuing education, and evaluation.<sup>9</sup> In Volume 2, *Standards Relating to Trial Courts*, the ABA addresses a multitude of specific topics ranging from effective procedure to assistance of counsel to cases involving litigants who have AIDS.<sup>10</sup>

The latest generation of standards for administering justice moves from the quantitative aspects of courts to the qualitative by espousing and attempting to measure access to justice; expedition and timeliness; equality, fairness, and integrity; independence and accountability; and public trust and confidence.<sup>11</sup>

The goal of this discussion is neither an attempted definition nor proposed boundaries. Rather, the purpose is to establish that all matters relating to courts, including the substance of judicial decisions, at one time or another have been addressed under “administration of justice” or its kin. The additional purpose is to set the stage for an admittedly selective chronicle of the administration of justice during California’s 150 years of statehood and a look forward into the first 50 years of the new millennium.

While the concept of administering justice has traces of antiquity, implementing the concept began in earnest only a few decades ago. The pace has since accelerated dramatically, and speed has either precluded or eclipsed maintaining a daily diary of judicial administration’s evolution. Each passing day erodes our ability to reconstruct that evolution in California and elsewhere.

In addition to documenting historical events, this chronicle is important for several further reasons. First, the courts are one-third of our tripartite

system of independent and interdependent branches of government, but the past of the judicial branch is history's stepchild.

A recent experience illustrates. The renowned Bancroft Library at the University of California at Berkeley has created and maintains a living history collection containing transcribed interviews with California leaders. During the planning of this book, the expectation was that the Bancroft collection would be a rich source of insights from California's Chief Justices and other leaders of the judicial branch, such as the several Administrative Directors of the Courts. However, Chief Justice Phil S. Gibson is the only Chief Justice in the collection, and the interview with him is directed more to his experiences with Governor Culbert Levy Olson, who appointed him to the Supreme Court, than as the leader of the judicial branch of government. Lost forever are the perspectives of subsequent, but now deceased, Chief Justices Roger J. Traynor, Donald R. Wright, and Rose Elizabeth Bird. We have suffered the same loss in the cases of Ralph N. Kleps, the inaugural Administrative Director of the Courts, and his successor Ralph J. Gampell.

The second reason for this chronicle is that administration of the judicial branch, compared to the executive and legislative, is still maturing here and elsewhere and therefore is possible to capture at an important evolutionary stage. According to Robert W. Tobin in 1999, "What passed for a state judicial branch, until very recently, was a group of appellate judges who performed the adjudicative functions of their office but had a very tenuous control over the trial courts, which remained local institutions immersed in local political culture, local government operations, and the local legal culture. The judicial branch of state government was, in large part, a legal fiction, rather than an operational reality."<sup>12</sup>

Finally, throughout California, and in many parts of America, courts as institutions are undergoing metamorphoses. In the process they are probing new areas of accountability, community relations, and justice. These efforts deserve to be memorialized.

Even so, the balance between inclusion and exclusion is delicate. Some will decry the amount of detail that follows. Others will complain of omissions or emphasis and join Cervantes' ancient indictment of "those grave chroniclers who give us such brief and succinct accounts that we barely taste, the gist of matter being left in their inkwells out of carelessness, malice or ignorance."<sup>13</sup>

Hopefully, the balance struck here will satisfy most readers. The choices in no way reflect anything other than a desire to capture as accurately as possible an important part of California's past and future.

California has the largest court system among the states, has one of the largest in the world, and has been at or near the cutting edge in the evolution of justice administration. In recent years California has enacted justice system changes on an unprecedented scale.

This is an auspicious time for drawing attention to the historical significance of these momentous changes. The Supreme Court turned 150 in 2000. The Judicial Council celebrated its 75th anniversary in 2001, followed immediately by the 40th anniversary of the Administrative Office of the Courts (AOC) that same year. The longevity and contributions of these vital institutions, both at home and elsewhere, warrant the focus on California's judicial branch.

It is useful to dwell briefly on the tendency to attribute achievements to incumbents at the time the achievement occurs. That tendency must be resisted here and throughout because the most notable improvements in the administration of justice evolved across the tenures of several Chief Justices and Administrative Directors of the Courts and required decades of effort to attain success. Chief Justice Arthur T. Vanderbilt could here find ample support for his statement: "Manifestly judicial reform is no sport for the short-winded or for lawyers who are afraid of temporary defeat."<sup>14</sup>

Consider, as one of many examples, trial court unification, which is later presented in detail. It could be argued that Chief Justice Ronald M. George and Administrative Director of the Courts William C. Vickrey

deserve full credit since unification was legislatively, constitutionally, and practically achieved between 1998 and 2001 during their watch. It certainly is a fact that without their leadership, diplomacy, and tenacity, unification would today remain an unfulfilled goal.

But in many ways, their remarkable efforts were a culmination of collective efforts stretching back to midcentury. The foundation for trial court unification, it could reasonably be proposed, was laid in 1950 with lower court reorganization accomplished under Chief Justice Phil S. Gibson prior to creation of the Administrative Office of the Courts. That foundation was expanded and strengthened by efforts in the early 1970s under Chief Justice Wright and Administrative Director of the Courts Ralph N. Kleps that produced Judicial Council and legislative consideration of both further lower court reorganization and a single-level trial court. Although those efforts were unsuccessful at the time, these topics remained on the agenda of the Judicial Council and received continuing legislative consideration. They also made possible in 1994 ultimate establishment of the municipal courts as the sole trial court of limited jurisdiction, which occurred during the overlapping tenures of Chief Justice Malcolm M. Lucas and Administrative Director Vickrey.

The fact is that hands too numerous to credit pulled on the oars of justice administration over the years. The equally important fact is that California was blessed, particularly during the second half of the last century, with several Chief Justices and Administrative Directors of the Courts who contributed remarkable leadership skills. Those skills were invaluable in establishing effective governance and other monuments in the administration of justice.

California was doubly blessed. In addition to several outstanding leaders at the state level, there was a rich supply at both trial court and appellate levels of leadership, courage, creativity, and commitment. Indeed, it is all too easy to imagine either the subversion or collapse of the many initiatives for improvement of the administration of justice during this period in the absence of this cavalry of leaders.

Credit reaches beyond the judicial branch. At key times and on key issues, leaders in the legislature stepped forward to enlist in these efforts. This also was true of several governors, senior executive-branch staff members, and county officials.

At various times and in various ways important progress in the administration of justice was achieved thanks to contributions from entities such as the State Bar of California, local or specialty bar associations, and the California Judges Association, as well as organizations external to California or the court system. Even if it were possible to identify and attribute those contributions (a dubious assumption), it seems no more appropriate than individual recognition in view of the duration and complexity of organizational effort required for the fundamental changes that occurred in these many decades.

Finally, the matters recorded here obviously did not occur in a vacuum. There has been continuous interaction between justice administration in California and significant national movements or experiments in other states. Indeed, these interactions spanned a spectrum—from the campaign early in the 1900s to create judicial councils as vehicles for reform to the consortium of entities in the latter part of the century dedicated to eradicating gender, racial, and other biases in our judicial systems. These synergies are noted when they have been especially vivid. To capture and do justice to all these interactions is beyond the capacity of this chronicle, but this in no way depreciates their importance or the importance of California's contributions to national advances.

# Notes

- <sup>1</sup> [R. A. Wilson], “The Alcalde System of California,” 1 Cal. 559 (San Francisco: Bancroft-Whitney, 1906).
- <sup>2</sup> [California] Senate Committee on the Judiciary, February 27, 1850, “Report on Civil and Common Law,” 1 Cal. 588 (San Francisco: Bancroft-Whitney, 1906), p. 599.
- <sup>3</sup> California Constitution, article VI, section 6.
- <sup>4</sup> Arthur T. Vanderbilt, ed., *Minimum Standards of Judicial Administration: A Survey of the Extent to Which the Standards of the American Bar Association for Improving the Administration of Justice Have Been Accepted throughout the Country*, The Judicial Administration Series ([New York]: Law Center of New York University for the National Conference of Judicial Councils, 1949).
- <sup>5</sup> Ernest C. Friesen, Edward C. Gallas, and Nesta M. Gallas, *Managing the Courts* (Indianapolis: Bobbs-Merrill, 1971).
- <sup>6</sup> American Bar Association, Judicial Administration Division, *Standards Relating to Court Organization*, Standards of Judicial Administration, volume 1 ([Chicago]: American Bar Association, 1990), p. vii.
- <sup>7</sup> Roscoe Pound, address delivered to the American Bar Association’s National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (August 29, 1906, St. Paul, Minnesota); text reported in *The Pound Conference: Perspectives on Justice in the Future* (St. Paul: West Publishing Co., 1979), pp. 337–53.
- <sup>8</sup> Vanderbilt, ed., *Minimum Standards of Judicial Administration*.
- <sup>9</sup> American Bar Association, *Standards Relating to Court Organization*.
- <sup>10</sup> American Bar Association, Judicial Administration Division, *Standards Relating to Trial Courts*, Standards of Judicial Administration, volume 2 ([Chicago]: American Bar Association, 1992).
- <sup>11</sup> U.S. Department of Justice, Bureau of Justice Assistance, National Center for State Courts, *Trial Court Performance Standards and Measurement System Implementation Manual* (Washington, D.C.: Bureau of Justice Assistance [1997]).
- <sup>12</sup> Robert W. Tobin, *Creating the Judicial Branch: The Unfinished Reform* (Williamsburg, Va.: National Center for State Courts, 1999), p. 3.

- <sup>13</sup> Miguel de Cervantes, *Don Quixote de la Mancha*, Modern Library Edition (New York: Random House, 1998), p. 136.
- <sup>14</sup> Vanderbilt, ed., *Minimum Standards of Judicial Administration*, introduction, p. xix.